

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Horace King

v.

Civil No. 14-cv-317-PB

Warden, New Hampshire State Prison

REPORT AND RECOMMENDATION

Horace King has filed an untitled motion (doc. no. 11). The court finds that the motion is a request to waive Claim 3 in this case and to go forward on Claims 1 and 2.¹

Motion to Waive Claim 3 (Doc. No. 11)

King was convicted of two sexual offenses in 2009. Before trial, King asked the trial court to review certain records of the victim in the case. Although the trial judge reviewed some records, he denied King's request to review other records. After King was convicted and sentenced, he filed an appeal in

¹In the Order (doc. no. 9) issued January 15, 2015, the court identified King's claims as: Claim 1(a)-(e), Claim 2(a)-(e), and Claim 3. King has not disputed the court's identification of his claims. The court uses those numbers in this Order to refer to King's claims.

the New Hampshire Supreme Court. The New Hampshire Supreme Court reversed the trial judge's decision to deny certain records, and sent the case back to the Superior Court for the judge to review the records and decide whether the records contained information showing that King should have a new trial. See State v. King, 162 N.H. 629, 633 (2011).


The trial judge then reviewed the records, denied King (and King's attorneys) access to those records, and denied King a new trial. See State v. King, No. 216-2008-CR-2130, 2365 (N.H. Super. Ct., Hillsborough Cnty., N.D. Apr. June 20, 2012). King and the state agreed that King would have until August 6, 2012, to appeal the Superior Court's decision, and that King would receive the same sentence that had originally been imposed. See State v. King, No. 216-2008-CR-2130, 2365) (N.H. Super. Ct., Hillsborough Cnty., N.D. July 6, 2012) (agreement concerning time for appeal and sentencing). King now states that he did not appeal that decision.

In this case, in Claim 3, King states that Superior Court Judge Brown incorrectly denied King and King's lawyer access to certain records after the case was reversed by the New Hampshire Supreme Court. Because King did not appeal the June 20, 2012,

decision, and has not stated any facts showing that he was unable to appeal, he has not exhausted Claim 3, and it may not go forward. See 28 U.S.C. § 2254(b). Therefore, the district judge should grant King's motion to waive Claim 3 (doc. no. 11).

Conclusion

For the reasons stated in this Report and Recommendation, the court recommends that the district judge grant King's motion to waive Claim 3 (doc. no. 11), and dismiss Claim 3 from this case. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See Garayalde-Rijos v. Munic. of Carolina, 747 F.3d 15, 21-22 (1st Cir. 2014).



Andrea K. Johnstone
United States Magistrate Judge

June 3, 2015

cc: Horace King, pro se